

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MATTHEW GIBSON,

Plaintiff,

v.

**Civil Action No. 5:21-cv-00181
Honorable Frank W. Volk**

**LOUISE E. GOLDSTON, individually,
COUNTY COMMISSION OF RALEIGH
COUNTY, a political subdivision, JEFF
MCPEAKE, individually, BRIAN WHITE,
individually, BOBBY STUMP,
individually,**

Defendants.

**DEFENDANT LOUISE E. GOLDSTON'S MOTION TO STAY
PROCEEDINGS PENDING DISPOSITION OF APPEAL**

COMES NOW, Defendant Louise E. Goldston, by counsel, Jennifer E. Tully, Adam Strider, and the law firm of Bailey & Wyant, PLLC, pursuant to Rule 8(a)(1)(A) of the *Federal Rules of Appellate Procedure*, and hereby moves this Court to stay proceedings in this matter pending disposition of appeal on the issue of judicial immunity. In support thereof, Defendant Louise E. Goldston states as follow:

1. On July 13, 2022, this Court entered a “Memorandum Opinion and Order” denying Defendant Louise E. Goldston’s Motion for Summary Judgment asserting, *inter alia*, judicial immunity. *See* DOC. # 130.

2. On July 13, 2022, Defendant Louise E. Goldston filed her “Notice of Appeal,” appealing this Order as it relates to judicial immunity. “Judicial immunity is an absolute immunity: it does not merely protect a defendant from assessment of damages, but also protects a judge from

damages suits entirely.” *Lemon v. Hong*, No. CV ELH-16-979, 2016 U.S. Dist. LEXIS 71756, 2016 WL 3087451, at *4 (D. Md. June 2, 2016) (citing *Mireles v. Waco*, 502 U.S. 9, 11, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991)). “Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages.” *Mitchell v. Forsyth*, 472 U.S. 511, 526, 86 L. Ed. 2d 411, 105 S. Ct. 2806 (1985); *see also Mireles v. Waco*, 502 U.S. 9, 11, 112 S. Ct. 286, 290 (1991).

3. As a general rule, an appeal divests the district court of power to modify its judgment or take other action affecting the cause without permission from the court of appeals, except insofar as a statute or rule expressly reserves the district court’s jurisdiction in aid of appeal. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). If, however, the appeal is from an interlocutory order, the district court retains jurisdiction to act on matters not involved in the appeal unless an order is entered staying the remainder of the proceedings. *See Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 378-79 (1985).

4. Here, while a determination of judicial immunity has been determined to be a “final decision,” thus making the current appeal not interlocutory, out of an abundance of caution, Defendant Goldston seeks this Court to enter a stay of all proceedings and matters before this Court pending the disposition of this issue on appeal. This would result in a stay and continuation of the following deadlines:

- a. Final Settlement Conference scheduled for July 14, 2022; and
- c. Trial set for July 19, 2022.

5. A stay is proper in this matter because any action taken by this Court would affect the rights of Defendant Louise E. Goldston related to her assertion of judicial immunity. Specifically, as Defendant Louise E. Goldston is sued in her individual capacity acting under the color of law, any

judgment would be against her as an individual. Going forward and obtaining such a judgment would result in a clear prejudice towards Defendant Louise E. Goldston. Finally, proceeding in this matter would otherwise directly or indirectly affect the issues on appeal and would result in piecemeal litigation.

WHEREFORE, based upon the foregoing, Defendant Louise E. Goldston prays this Court will enter an Order staying this matter and continuing all current deadlines until such time as the appeal has been decided by the United States Circuit Court of Appeals for the Fourth Circuit.

**Louise E. Goldston,
By Counsel,**

/s/ Jennifer E. Tully

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing **“DEFENDANT LOUISE E. GOLDSTON’S MOTION TO STAY PROCEEDINGS PENDING DISPOSITION OF APPEAL”** was served upon the following parties through the Court’s Electronic Case Filing (ECF) system on this day, July 13, 2022:

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